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LETTER DATED 9 DECEMBER 1994 FROM THE SECRETARY-GENERAL ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

In my letter of 1 October 1994 to the President of the Security Council (S/1994/1125), by which I transmitted the interim report of the Commission of Experts established pursuant to Security Council resolution 935 (1994), I noted that I would bring to the attention of the Council the final report of the Commission of Experts as soon as it was made available to me. The Chairman of the Commission, Mr. Atsu-Koffi-Amega, transmitted to me the final report of the Commission in Geneva on 3 December 1994.

In its final report, the Commission had provided an overview of the facts based on the information made available to it from various sources. It then analysed the applicable law and some selected legal issues of particular significance in the context of the Rwandan conflict.

The conclusions it reached on the basis of the evidence gathered and analysed may be summarized as follows:

(a) There exists overwhelming evidence to prove that acts of genocide against the Tutsi ethnic group were committed by Hutu elements in a concerted, planned, systematic and methodical way, in violation of article II of the Convention on the Prevention and Punishment of the Crime of Genocide, 1948;

(b) Crimes against humanity and serious violations of international humanitarian law were committed by individuals of both sides of the conflict, but there is no evidence to suggest that acts committed by Tutsi elements were perpetrated with an intent to destroy the Hutu ethnic group as such, within the meaning of the Genocide Convention; the Commission recommended, however, that investigation of violations of international humanitarian law and of human rights law attributed to the Rwandese Patriotic Front be continued by the Prosecutor of the recently established International Tribunal for Rwanda.

In paragraph 3 of resolution 935 (1994), the Security Council requested me to take account of the conclusions of the Commission in any recommendation for further appropriate steps. In this connection I note that by its resolution 955 (1994) the Council decided to establish an international tribunal for the sole purpose of prosecuting persons responsible for genocide and other serious

violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States between 1 January 1994 and 31 December 1994.

In view of that resolution, I believe that the recommendations of the Commission, namely, that an international tribunal should be established and that the investigation into allegations of violations of international humanitarian law should continue, have already been acted upon. I am also confident that the material collected by the Commission, which it was requested to transmit to the Prosecutor of the International Tribunal for Rwanda, will greatly facilitate his task.

I therefore consider that the Commission has discharged its mandate entrusted to it by the Security Council in its resolution 935 (1994). In accordance with paragraph 3 of that resolution, I hereby transmit to the Council the final report of the Commission of Experts established pursuant to Security Council resolution 935 (1994).

(Signed) Boutros BOUTROS-GHALI

Annex

[Original: English and French]

Final report of the Commission of Experts established pursuant to Security Council resolution 935 (1994)

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I. INTRODUCTION

A. Mandate

1. On 1 July 1994, the Security Council adopted resolution 935 (1994), in which it requested the Secretary-General to establish, as a matter of urgency, an impartial Commission of Experts to examine and analyse information submitted pursuant to that resolution, with a view to providing the Secretary-General with its conclusions on the evidence of grave violations of international humanitarian law committed in the territory of Rwanda, including the evidence of possible acts of genocide.

2. In pursuance of paragraph 3 of that resolution, the Secretary-General submitted, on 26 July 1994, a report to the Security Council (S/1994/879). In that report, the Secretary-General stated that the Council had condemned all breaches of international humanitarian law in Rwanda, particularly those perpetrated against the civilian population during the armed conflict, and had recalled that persons who instigated or participated in such acts were individually responsible. The Council had affirmed that the killing of members of an ethnic group with the intention of destroying the group as such, in whole or in part, constituted a crime under international law.

3. Based on the terms of reference set out in Security Council resolution 935 (1994), the Secretary-General requested the Commission of Experts to review and update information available from all sources; to carry out its own investigations in Rwanda; to draw its own conclusions concerning evidence of specific violations of international humanitarian law and in particular acts of genocide; and to determine whether and to what extent certain individuals might be held responsible for having committed those violations.

4. In view of the above, the Commission was requested to examine the question of jurisdiction, whether international or municipal, before which such persons could be brought to trial.

5. Furthermore, in his report the Secretary-General outlined the composition of the Commission of Experts and its operational modalities. In that regard, the Secretary-General took note, inter alia, of the similarities of the mandates entrusted by the Commission on Human Rights in its resolution S-3/1 of 25 May 1994 to the Special Rapporteur on Rwanda and the terms of reference outlined by the Security Council in its resolution 935 (1994) vis-à-vis the Commission of Experts.

6. To avoid unnecessary overlapping and to ensure maximum cooperation between the two investigative bodies, the Secretary-General urged that the information submitted to him in pursuance of the above-mentioned resolutions should be made available to each body in the performance of their respective tasks.

7. For reasons of efficiency, practicality and economy, the Secretary-General decided that the Commission of Experts should be located at the United Nations Office at Geneva, where it could benefit from the resources of the Office of the

United Nations High Commissioner for Human Rights as well as those made available to the Special Rapporteur of the Commission on Human Rights.

Given the urgency of the matter, the Security Council requested the Secretary-General, within four months from the establishment of the Commission of Experts, to report to the Council on the conclusions of the Commission and to take account of these conclusions in any recommendations for further appropriate steps. Accordingly, the Secretary-General established the deadline of 30 November 1994 for the submission of the final report.

9. Moreover, the Commission of Experts decided at its first session, on 18 and 19 August 1994, to submit an interim report to the Secretary-General covering its preliminary investigations and activities prior to 30 September 1994. It also designated Mr. Salifou Fomba (Mali) as Rapporteur of the Commission and developed methods of work and security procedures in respect of documentation (see appendices II and IV).

10. On 1 October 1994, the Secretary-General transmitted to the Security Council the preliminary report of the Commission of Experts (S/1994/1125, annex). The report contained the Commission's preliminary conclusions and recommendations, in particular that individuals from each side to the armed conflict had perpetrated serious breaches of international humanitarian law and crimes against humanity. It concluded also that acts of genocide had been perpetrated against the Tutsi group by Hutu elements in a concerted, planned, systematic and methodical way.

11. Based on those conclusions the Commission of Experts recommended to the Security Council to take all necessary and effective action to ensure that the individuals responsible for the foregoing grave violations of human rights be brought to justice before an international criminal tribunal. Furthermore, the Commission recommended that the Security Council amend the statute of the International Criminal Tribunal for the former Yugoslavia 1/ to expand the Tribunal's jurisdiction to cover crimes under international law committed during the armed conflict in Rwanda that began on 6 April 1994.

12. On the consideration of the Secretary-General's report (S/1994/1125), and pursuant to paragraph 3 of Security Council resolution 935 (1994), the Security Council, on 8 November 1994, adopted resolution 955 (1994) with 13 votes in favour, 1 against (Rwanda) and 1 abstention (China).

13. In resolution 955 (1994), the Security Council, determining, inter alia, that the situation in Rwanda continued to constitute a threat to international peace and security, and acting under Chapter VII of the Charter of the United Nations, decided, upon the request of the Government of Rwanda, "to establish an international tribunal for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandese citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994". The Council also adopted the Statute of the International Tribunal for Rwanda, which is contained in appendix I to the present report.

B. Composition

14. On 26 July 1994, the Secretary-General established the Commission of Experts, composed of three members. Accordingly, he nominated Mr. Atsu-Koffi Amega (Togo), as Chairman; Ms. Haby Dieng (Guinea); and Mr. Salifou Fomba (Mali), to serve in their personal capacities.

C. Meetings

15. The Commission of Experts began its work on 15 August 1994, in Geneva. Its first session was held on 18 and 19 August, during which it adopted its internal methods of work, rules of procedure and its plan of action.

16. On 19 August 1994, the Commission of Experts held consultations with the Special Rapporteur of the Commission on Human Rights on Rwanda, Mr. Réne Degni-Ségui, to coordinate the modalities of their work, primarily for the purposes of gathering information and evidence concerning their respective mandates. The Commission also met several times with the United Nations High Commissioner for Human Rights. Meetings were held between the Commission and representatives of a number of United Nations organizations, and in particular delegations from the Office of the United Nations High Commissioner for Refugees (UNHCR) and the World Food Programme (WFP), and also from the International Committee of the Red Cross (ICRC) and a number of non-governmental organizations.

17. The Chairman appealed to Member States for assistance so as to improve the implementation of the Commission's mandate. On 23 August, prior to the Commission's departure for Rwanda, he held a meeting at Geneva with 21 government representatives to outline the Commission's immediate plan of action. He made a request for assistance, including in matters related to prosecution, police investigations and forensic expertise so that proper hearings of victims and witnesses could be conducted and that mass graves could be exhumed.

18. Pursuant to paragraph 3 of Security Council resolution 935 (1994), the Commission met in private session to adopt its preliminary report for submission to the Secretary-General.

19. On 20 September 1994, the Commission met in special session with members of the delegation from the United States of America, and in particular with Mr. Mike Mansfield, who conducted an investigating mission in Rwanda from 28 September to 7 October 1994 for the Commission.

20. On 10 October 1994, the Commission met at Geneva with representatives from UNHCR: Mr. Fouinat, Chef de Cabinet; Mr. Kimbimbi, Senior Legal Adviser for Africa; and Mr. Gersony, Consultant.

21. Furthermore, the Commission met with the Prosecutor of the International Tribunal for Rwanda, Mr. Justice Richard Goldstone, at Geneva and at The Hague, to discuss possible arrangements for the transmission of documentation and evidence from the Commission of Experts on Rwanda to the Office of the Prosecutor.

D. Missions carried out in Rwanda and in neighbouring countries

22. From 29 August to 17 September 1994, the Commission conducted a field mission in Rwanda and its three neighbouring countries, Burundi, the United Republic of Tanzania and Zaire. The Commission met with the national authorities of those countries, United Nations officials, representatives of international and local non-governmental organizations, diplomatic representatives and other individuals in order to collect substantial information relating to grave violations of international humanitarian law and acts of genocide committed in Rwanda during the conflict.

23. During its first stay in Rwanda, the Commission carried out a number of missions in the field and initiated several investigations. It also had the opportunity to hold a number of meetings with Rwandese refugees at Goma, Zaire, and at Dar-es-Salaam and to collect allegations of violations.

24. In accordance with its plan of action, the Commission of Experts determined it necessary to undertake a second mission to Rwanda. The Commission determined that it should make an effort to ensure that the means and methods of the investigation should continue with all necessary care and dispatch, always with a view to meeting the high procedural and evidentiary standards of international law and justice. The Commission of Experts saw that the work of the Special Investigative Unit of the Human Rights Field Operation in Rwanda was working efficiently. The Special Investigation Unit has created two teams: the Site Investigation Team and the Documentation and Evidence Team. The Site Investigation Team conducts field investigations into massacres and mass grave sites with the assistance of experienced forensic experts. The Documentation and Evidence Team gathers, catalogues and supervises custody and control of all documents and evidence gathered by the Special Investigation Unit in accordance with the procedures established and adopted by the Commission at its first session on 18 and 19 August 1994 (see appendices III and IV).

25. The Commission made visits to Nyamirambo (Kigali), Nyarubuye, Gafunzo, Gikondo, Cyanvuzo, Save, M'bazi, Ntarama and a number of other sites of atrocities. The Commission was received by the Minister of the Interior, the Minister of Justice, the Prime Minister and the Vice-President, General Paul Kagame. There were meetings with the Special Representative of the Secretary-General, Mr. Shahyar Khan, General Jean-Claude Toussignant (Commander of the United Nations Assistance Mission for Rwanda (UNAMIR)) and with the Chiefs of United Nations agencies in the region as well as with representatives of the NGOs working in Rwanda.

26. During its second mission, the Commission received the technical assistance of a number of experts. The Commission was pleased that its appeal for support, launched by the Chairman, was heard by certain States. In particular, Spain put at the disposal of the Commission a team of experts composed of two investigative experts and two forensic experts. Working alongside this team was an investigative expert from Switzerland.

E. References made to the Commission of Experts by other United Nations bodies

27. At its first session, the Commission took note of Security Council resolutions 918 (1994) and 925 (1994) and of the reports of the Secretary-General (S/1994/640 and S/1994/879) leading to the establishment of the Commission of Experts.

28. The Commission also took note of Commission on Human Rights resolution S-3/1, adopted by the Commission at its special session held at Geneva on 25 May 1994, and of the reports of the Special Rapporteur of the Commission on Human Rights on Rwanda (S/1994/1157, annexes I and II, and S/1994/1157/Add.1, annex) submitted pursuant to that resolution.

29. Furthermore, at its forty-sixth session, the Subcommission on Prevention of Discrimination and Protection of Minorities adopted resolution 1994/1 entitled "Situation in Rwanda", which called the attention of the Commission of Experts to the need to inquire, inter alia, into events leading to the current situation, including the attack on the plane carrying the Presidents of Burundi and Rwanda, the assassination of the Prime Minister and of Rwandese ministers and dignitaries, as well as of the 10 United Nations soldiers assigned to protect the Prime Minister; to identify the Rwandese and foreign individuals implicated in the traffic of arms or other illicit traffic; and to engage as a priority in the identification and finding of evidence leading to attribution of responsibility of proprietors, management and personnel of certain media institutions, especially those of Radio des Mille Collines, which had played a crucial role in the perpetration and spread of the atrocities through incitement.

II. SOURCES OF INFORMATION AND ANALYSIS OF INFORMATION RECEIVED BY THE COMMISSION OF EXPERTS

30. In pursuance of Security Council resolution 935 (1994) of 1 July 1994, the Commission of Experts carried out various investigations and obtained reliable information concerning serious human rights violations.

A. Information received from States

31. The Commission received documents from the Governments of Spain, the United States of America, France and Ireland, which in turn had received them essentially from non-governmental organizations and individuals.

32. The dossiers forwarded by the Spanish Government originate from the following organizations and institutions: ANB-BIA, the Liaison Committee of the Conference of Catholic Bishops of Rwanda and the Protestant Council of Rwanda, the Congregation of Sisters of San José de Gerona, Médecins du monde (Spain) and the Society of Missionaries of Africa (White Fathers).

33. The Government of the United States also presented to the Commission documents originating from the following governmental and non-governmental

organizations: the Senate Committee on Foreign Relations, the State Department, Amnesty International (United States) and the Committee for Refugees (United States). These various reports and eyewitness accounts contain information on many massacres carried out all over Rwanda, the victims being for the most part members of the Tutsi group and Hutu opponents of the regime of former President Juvénal Habyarimana. They also reveal that these violations were basically carried out by armed groups composed of interahamwe ("those who attack together") militias trained by the Presidential Guard and supported by the Rwandese armed forces. The reports condemn the behaviour of several figures in the former regime and the owners and journalists of Radio des Mille Collines, who bear prime responsibility for inciting Hutus to exterminate Tutsis and kill moderate Hutus.

34. Most of the organizations which forwarded this information to the Governments of Spain and the United States urge that the United Nations act speedily to prevent further human rights violations in Rwanda and to set up an impartial body to investigate serious violations of human rights and humanitarian law, including genocide.

35. The United States State Department has forwarded to the Commission documents from the special investigative team it put at the Commission's disposal in September-October 1994. These comprise principally written statements by witnesses and victims, accounts of the activities of political parties, reports by humanitarian organizations on the human rights situation in Rwanda, letters from foreign diplomats, press releases from the United Nations Assistance Mission for Rwanda (UNAMIR), the report of an inquiry by UNAMIR on the killing of 10 Belgian United Nations peace-keepers, documents on militia activities and summaries of radio broadcasts. Although most of them date from before 6 April 1994, these accounts and documents prove the existence of a plan for genocide against Tutsis and the murder of moderate Hutus. Some documents reveal actual preparations for such actions, while others refer to lists of figures to be killed.

36. The French Government forwarded to the Commission information collected during "Operation Turquoise".

37. Lastly, the Commission received a paper from the Canadian Government on the existence of allegations concerning participation by a senior MRND official in campaigns of incitement to ethnic hatred and genocide against Tutsis (a speech delivered in 1992). The Commission has been informed that the investigation concerning this matter is proceeding on its normal course.

B. Information provided by organs within the United Nations system

38. The Special Rapporteur, appointed under Commission on Human Rights resolution S-3/1, has transmitted three reports to the Commission to date.

39. In his first report (S/1994/1157, annex I) of 28 June 1994, the Special Rapporteur reported large-scale massacres organized and carried out by Hutu militias - the interahamwe, close to the National Revolutionary Movement for

Democracy and Development (MRND), and the impuzamugambi ("those who have a single aim"), close to the Coalition for the Defence of the Republic (CDR).

40. The victims of the massacres were mostly either of Tutsi origin or were Hutus considered to be moderate. The report cited numerous heinous acts perpetrated against those groups, including the killing of moderate Hutus by extremist Hutus, acts of torture and other cruel, inhuman or degrading treatment, as well as the incitement of ethnically motivated hatred and violence. The report concluded that responsibility for the above rested with the aforementioned militias and the "transitional Government" of Rwanda. It recommended, inter alia, the establishment of an ad hoc international criminal tribunal or, alternatively, the extension of the jurisdiction of the International Criminal Tribunal for the former Yugoslavia.

41. In his second report (ibid., annex II) of 12 August 1994, the Special Rapporteur condemned in particular the activities of Radio-Télévision Libre des Mille Collines (RTLM) and the exiled former Government, which he said were responsible for incitement to the murder of Tutsis and Hutu moderates and had caused the refugees to be afraid to return to Rwanda.

42. In his third report (S/1994/1157/Add.1, annex), of 11 November 1994, the Special Rapporteur confirmed the constituent elements of genocide, namely the discovery of mass graves and the existence of proof or indications of the planned genocide of Tutsis. It also describes the existence of human rights violations which may be attributed to military personnel and civilians. These may be broken down into serious violations of the right to property, personal safety and the right to life. As the Special Rapporteur noted in his third report, the current Minister of Justice disclosed in a fax to the Special Rapporteur that the Government had arrested about 100 of its own soldiers, whom it intends to bring before military courts for serious violations of codes of military discipline.

43. Lastly, the Special Rapporteur has forwarded to the Commission documents on the serious and large-scale violations of human rights in Rwanda.

44. The Commission of Experts has also received from UNHCR information concerning massacres alleged to have been perpetrated by members of the Rwandese Patriotic Front (RPF) army on a systematic basis against a number of Hutus. In all alleged cases, the victims included not only men, but also women and children. Most of the massacres do not seem to have been provoked by individuals suspected of participation in the massacres of Tutsis carried out in April 1994. Bodies that drifted down the Kagera river at an average rate of five per day in the last week of September, many of which had their feet and hands tied - indicating that the victims had been summarily executed - were being recovered.

C. Information provided by other intergovernmental bodies

45. The Commission of Experts received a copy of the report on the situation in Rwanda submitted by the Secretary-General of the Organization of African Unity (OAU) to the Council of Ministers of OAU at its sixtieth regular session (Tunis,

6-11 June 1994). In his report, the Secretary-General noted the worsening of the political situation and the growing lack of security evidenced by the murder of political leaders and the massacre of civilians in deliberate killings perpetrated on an almost unimaginable scale. He called in particular for the establishment of a commission of independent and impartial experts to investigate the circumstances surrounding the accident in which the President's airplane was involved on 6 April 1994 and the massacres which followed it.

D. Information provided by non-governmental organizations

46. A large number of non-governmental organizations submitted reports to the Commission. These reports include either general observations on the situation as regards violations of human rights and humanitarian law in Rwanda, or precise allegations on the murder or kidnapping of named individuals.

47. These crimes were essentially attributed to the militias referred to above, the Rwandese Armed Forces (FAR), the political and administrative authorities and several hundred Rwandese of Hutu origin.

48. A number of these reports contain detailed lists of those allegedly responsible for massacres and other abuses. The non-governmental organizations whose reports were received by the Commission are the following: African Rights, Amnesty International, Association rwandaise pour la défense des droits de l'homme, Avocats sans frontières, Comité pour le respect des droits de l'homme au Rwanda, Conseil régional des organisations non gouvernementales de développement du Sud-Kivu, Droits de l'homme sans frontières, International Federation of Human Rights, International Service for Human Rights, International Society for Human Rights (Zaire branch), Médecins du monde, Médecins sans frontières, Nord-Sud XXI, OXFAM, Reporters sans frontières, Survival International, United States Committee for Refugees and World Organization against Torture. ICRC also supplied information.

49. Most of these reports recommend the establishment of a tribunal to try and punish the individuals responsible for genocide.

50. The material contained in most of these reports seems to be precise, detailed and corroborated by the information gathered in particular by the Special Rapporteur. Among noteworthy documents, mention should be made of the following evidence incriminating identified individuals: the statutes of RTLM (featuring the names and signatures of 50 shareholders), and a complaint and claim for indemnification lodged by Reporters sans frontières with the judicial authorities in Belgium and France and directed against figures in the former Rwandese regime who are mentioned by name. They are accused in particular of the following acts: (a) the crime of genocide; (b) serious violations of international humanitarian law; (c) crimes against humanity; (d) torture and other cruel, inhuman or degrading punishment or treatment. One of the items in this dossier is a transcription of broadcasts made by RTLM, containing incitements to commit acts of genocide.

E. Information provided by each side to the armed conflict

51. The Commission has received from the two parties to the conflict thousands of pages of documents, letters, written complaints and testimony and other items (sound and audiovisual recordings) instancing serious violations of international humanitarian law. The value of these documents varies. From the RPF-dominated Government currently in power in Rwanda, the Commission received documents accusing the former Government and bodies and militias under its control of acts relating to incitement to ethnic hatred and the perpetration of genocide against Tutsis. Some of these documents contain non-exhaustive lists of the principal suspects. In this context, the Commission received from RPF a list of Hutu figures who are accused of instigating the massacres and other crimes committed in Rwanda from 6 April 1994 onward.

52. For their part, leaders of the exiled former Government supplied the Commission with documents indicating: (a) the names of several hundred persons alleged to have been massacred by the inkotanyi troops (regular troops) of RPF; (b) the sites of some 15 common graves in which the victims of massacres alleged to have been perpetrated by RPF were buried; and (c) written testimony by a number of Hutus who escaped from zones occupied by RPF during the armed conflict.

F. Information provided by private individuals

53. The Commission also received testimony, reports, complaints and other documents from individuals. They cover essentially facts recounted by members of religious orders or foreign nationals who have lived in Rwanda concerning Rwandese nationals and Rwandese refugees in Zaire.

54. Other information was supplied by associations of Rwandese individuals abroad belonging to one or other party to the conflict. These provide very partisan information. The pro-Hutu associations maintain that the international community would be wrong to consider the Tutsis as the only victims of the Rwandese tragedy. In particular, they report various violations such as murders of prisoners, hostage-taking, the destruction and pillage of property belonging to fugitive Hutu extremists, torture and cruel, inhuman or degrading treatment. Meanwhile, the pro-Tutsi associations emphasize the premeditated and planned nature of the massacres perpetrated by the Hutus.

III. OVERVIEW OF THE FACTS

A. Background

55. A number of massacres have been perpetrated in Rwanda in the last 45 years. In particular, the years 1959, 1963, 1966, 1973, 1990, 1991, 1992 and 1993 were marked by massacres in Rwanda. Mass killings were carried out in October 1990, January-February 1991 and March 1992. From December 1992 to February 1993, about 2,000 people were murdered. The report of the fact-finding mission of the International Federation of Human Rights of February 1993 recounted massive and systematic human rights violations. These violations were principally carried

out against Tutsi individuals. The facts were corroborated by other sources (see reports published by Amnesty International, Rwanda, persecution of Tutsi, minority and repression of government critics, 1990-1992, May 1992; and also by the Association rwandaise pour la Défense des droits de la personne et des libertés publiques, Rapport sur de droits de l'homme au Rwanda, September 1991-September 1992.

56. On 6 April 1994, Juvénal Habyarimana, President of Rwanda, Cyprion Ntyamira, President of Burundi, and a number of members of their entourage and crew were killed when the aircraft carrying them was attacked. This disaster triggered a preplanned execution of severe human rights violations, including systematic, widespread and flagrant breaches of international humanitarian law, large-scale crimes against humanity and genocide.

57. Since 6 April 1994, an estimated 500,000 unarmed civilians have been murdered in Rwanda. That estimate indeed may err on the conservative side for, as the Special Rapporteur of the Commission on Human Rights observed in his report of 28 June 1994 (S/1994/1157, annex I, para. 24), some reliable estimates put the number of dead at close to 1 million. It is unlikely that the world will ever know the exact number of men, women and children slaughtered in this holocaust.

B. Concerted, planned, systematic and methodical nature of the criminal acts

58. Overwhelming evidence indicates that the extermination of Tutsis by Hutus had been planned months in advance of its actual execution. The mass exterminations of Tutsi were carried out primarily by Hutu elements in a concerted, planned, systematic and methodical way and were motivated out of ethnic hatred. These mass exterminations were clearly "committed with intent to destroy, in whole or in part, a national, ethnic(al), racial, or religious group, as such" within the meaning of article II of the Convention on the Prevention and Punishment of the Crime of Genocide, 1948. 2/ Certain organizations such as Doctors without Borders have provided audio tapes and press releases based on information from former informants from the Government's official news service. These informants provided them with tapes proving the existence of death squads called "Network O", established by the staff of the former Head of State who was assassinated.

59. The Rwandese Government of President Juvénal Habyarimana, following colonial policy, had classified Rwandese by ethnic group. The ethnic identity of individuals in Rwanda is traditionally determined on a patrilineal basis, taking sole account of the father's ethnicity. While mixed marriage abounds in Rwanda, one is considered a Tutsi in Rwanda where the father is Tutsi, regardless of the mother's ethnic background. In April 1994, the population of Rwanda consisted of approximately 84 per cent Hutus, 14 per cent Tutsis, and 2 per cent other, which includes the Twa population.

60. Certain physical traits have commonly been attributed to the Tutsi population that are taken to distinguish them from Hutus. Tutsis are described

as being taller than Hutus, with more aquiline noses, thinner ankles, longer fingers and longer jawbones.

61. In Rwanda, the ethnic designation of every individual is clearly indicated on his or her identity card. In the past, censuses have been taken that relate the name of each Rwandese to his or her ethnic identity. These lists were used during the killings that began on 7 April 1994.

62. Ample evidence of extensive preparation and planning months in advance of the actual violations indicates the concerted and premeditated character of the criminal acts in question.

63. In 1992, Leon Mugesera, an official in President Habyarimana's Mouvement révolutionnaire national pour le développement delivered a speech at a party conference at Gisenyi. In his speech, he explicitly called on Hutus to kill Tutsis and to dump their bodies in the rivers of Rwanda. The Commission of Experts has in its possession an audio cassette of this speech, which will likely prove to be of significant probative value to establish the presence of criminal intent to commit genocide when the perpetrators are brought to justice.

64. Racist hate propaganda was disseminated on a widespread basis as far back as 1993, especially by Radio-Télévision Libre des Mille Collines (RTLM), a private radio station owned by members of President Habyarimana's party. These incitements branded Tutsis as well as certain Hutu opponents of the President as "enemies" and "traitors" who "deserve to die". The radio referred to all Tutsi as "the enemy" and accused them of siding with RPF. It called for all "enemies" to be "exterminated". Posters, leaflets and radio broadcasts on Radio des Milles Collines dehumanized Tutsis as "snakes", "cockroaches" and "animals". Individuals targeted in the radio broadcasts were among the first killed (along with their families) in April 1994.

65. Subsequently, a training camp for Hutu militia (interahamwe) was established in Mutara. The programmes there, which lasted for three weeks each, involved the indoctrination of groups of 300 men in ethnic hatred against the Tutsi minority. The programmes also propagated information on methods of mass murder. These trainees formed the militia of interahamwe, and formed the core perpetrators of genocide. This militia was augmented by the impuzamugambi of the Coalition for the Defence of the Republic (CDR). The impuzamugambi militia were trained, armed and led by the Presidential Guard and other elements of the Rwandese government army.

66. Events in the hours immediately following the aircraft crash claiming the lives of President Habyarimana and President Ntyamira underscore the fact that extensive planning and premeditation were involved in the human rights violations. As stated in the first report of the Special Rapporteur (ibid., para. 26), the "provisional Government" was formed within only a few hours of the aircraft crash. Within 30 to 45 minutes of the crash, even before the news could be spread by national radio, barricades were erected on certain major thoroughfares. The Special Rapporteur records that within 45 minutes of the crash, the road from the Hotel Méridien to Amahoro Stadium was blocked by soldiers and civilians. He notes that senior officers of the general staff of the "provisional Government" conceded these facts. However, the officers

contended that the exceptionally swift pace of events was really attributable to civilians and certain soldiers acting spontaneously in reaction to the sudden death of the Rwandese President, who had enjoyed great popularity. This explanation can hardly be convincing because news of the crash, which had only occurred 45 minutes previously, had yet to be disseminated.

67. Perhaps even more damning, the Rwandese Presidential Guard set up roadblocks that prevented UNAMIR troops from reaching the airport to investigate the President's assassination. 3/

68. Before dawn on 7 April, members of the Presidential Guard went to the homes of moderate opposition members and then killed them and their families. Among those killed were Prime Minister Agathe Uwilingiyimana, 10 Belgian UNAMIR soldiers who tried to protect her, the President of the Supreme Court (Cour de Cassation), Mr. Joseph Kavaruganda, and human rights advocates Charles Shamukiga, Fidele Kanyabugoyi, Ignace Ruhatana and Patrick Gahizi. Soldiers also attacked a Roman Catholic centre in Kigali and murdered 17 Tutsis, mostly priests and nuns, including Father Chrysologue Mahame (Society of Jesus) and Abbot Augustin Ntagara.

69. On 8 April 1994, the Presidential Guard, along with Rwandese army troops and interahamwe militia, began a systematic slaughter of Tutsi civilians in Kigali. As the Special Rapporteur states in his report, roadblocks had been set up and identity cards inspected to determine the ethnic identity of individuals within 30 to 45 minutes of the aircraft crash. At that time, individuals bearing Tutsi physical traits were singled out and summarily executed. As reported extensively in press reports, the streets of Kigali had begun to fill with corpses.

70. Eyewitness accounts indicate that house-to-house searches were carried out and Tutsis were hunted down and killed. Some Tutsis tried to flee to churches or hotels or to places where there might be safety in numbers. However, soldiers systematically murdered Tutsis who had tried to take refuge in the warehouse of the Belgian Red Cross in Kigali. Churches and the Amahoro Stadium were surrounded by soldiers who prevented Tutsis inside from leaving.

71. On 9 April 1994, the Rwandese Army and interahamwe militia continued to slaughter Tutsis at street barricades in Kigali and began to take people out of the churches for execution. At least 100 persons that were either inside or in front of a church were murdered. Others were burnt alive in a chapel.

72. Within the next week, the Presidential Guard and militia had killed an estimated 20,000 people in Kigali and its immediate environs. The mass killings, fomented by Radio des Milles Collines broadcasts which encouraged listeners to "fill the half-empty graves", spread to areas outside Kigali.

73. Many documents from human rights non-governmental organizations have provided non-exhaustive lists of victims:

Human Rights Watch/Africa (Report of June 1994)

- 2,800 persons killed in a church in Kibungo;
- 6,000 Tutsis killed in a church in Cyahinde where they had taken refuge; only 200 survived;
- 4,000 killed in a church in Kibeho;
- 2,000 killed in a parish in Mibirizi;
- 4,000 killed in Shangi parish;
- 500 killed in Rukara parish;
- Hundreds of sick patients and also medical staff in hospitals in Kigali and in Butare;
- 31 Tutsi orphans and 11 Red Cross volunteers trying to protect them, killed at the orphanage at Butare;
- 88 students killed at their school in Gikongoro.

Doctors without Borders (United States)

74. According to testimony on the events of 6 to 30 April 1994, Doctors without Borders provided the names of hundreds of persons murdered, prefecture by prefecture. The perpetrators of the crimes were Rwandese civilians and Hutu refugees from Burundi, RPF army soldiers and as well as Hutu militia.

Prefecture of Ngenda

- Three persons were killed in a camp at Burenge (6-10 April);
- Five persons working for Doctors without Borders were murdered at Burenge, close to the office of the Belgian Red Cross, on 10 April 1994;
- On 7 and 12 April, 24 other persons disappeared from a camp.

Prefecture of Butare

- 600 persons, most of them Tutsis, were killed in the commune of Mungaza on 19 April. The perpetrators of the crimes were from the Hutu militia and neighbouring communes, including, and accompanied by, the communal administrator, the sector councillor, cell members, the mayor (bourgmestre) and members of the Mouvement révolutionnaire national pour le développement;
- Numerous sick, wounded and medical staff of the Butare university hospital were murdered between 16 and 26 April 1994 by the soldiers of the Rwandese armed forces and the Hutu militia;

- The Sub-Prefect of Butare (Parti socialiste démocrate, opposition party) and all members of his family, including a child of three months, were murdered by elements of the Presidential Guard, interahamwe militia and communal police officers, on 22 April 1994;

- 30 Tutsi civilians were beaten by the Presidential Guard in front of the Fascon Hotel;

- 170 patients (wounded and sick), all belonging to the Tutsi ethnic group, and 5 members of the medical staff were kidnapped and then beaten to death or cut into pieces at the Butare University hospital on 22 and 23 April 1994; the perpetrators of the violations were interahamwe militia, supported by Presidential Guard soldiers coming from Kigali and present in the hospital;

- 4,000 Tutsi Rwandese civilians were massacred in the communal office of Muyaga by Rwandese armed forces soldiers supported by Hutu civilians on 27 April 1994.

Prefecture of Kibungo

- In the centre of Saint Joseph, Kibungo, 2,800 Tutsis were attacked on 15 April 1994 by Hutu soldiers and interahamwe militia with grenades.

Prefecture of Gikongoro

- 100 Tutsi civilians were killed in Kibeho (south-west Rwanda) by soldiers of the "provisional Government" army and by groups of armed Hutus following orders of the army.

United States Committee for Refugees

- 15,000 Tutsis were grouped together, by order of the Kibuye Prefect, at the stadium of Gatwaro, Kibuye, and massacred by interahamwe militia on 18 April 1994;

- 4,300 Tutsis were massacred at St. Jean Home from 18 to 20 April 1994.

Testimony of clergy gathered by soldiers of "Operation Turquoise"

- 30 priests of the Nyundo Diocese were murdered;

- Massacres were carried out and mass graves (pits) dug at Birambo, on the order of the mayor (bourgmestre) of Bwakira, and of the Sub-Prefect of Birambo.

Testimony from general sources

75. On 11 April, more than 800 Tutsis gathered at Kiziguro Roman Catholic Church, Murambi district, Byumba Prefecture. Rwandese soldiers and militia attacked and killed all but 10 of them. The survivors threw themselves into the mass grave to avoid being hacked to death.

76. Nine Tutsi patients at the Kigali hospital were killed in separate attacks on 11 and 15 April by Rwandese government soldiers.

77. It was reported that 500 Tutsis were killed by interahamwe militia and gendarmes at Rukara Roman Catholic mission in Kibungo Prefecture, Rukara district.

78. On 15 April and thereafter, Rwandese army troops distributed to interahamwe militia automatic and semi-automatic rifles and pistols, with which they continued the mass slaughter of Tutsis that had begun with machetes and other weapons.

79. On 17 April, more than 100 Tutsis were killed by soldiers and militia at Nyanza. On 18 April, 2,000 Tutsi were massacred by interahamwe militia in the Mabirizi Roman Catholic church, Cyangugu Prefecture, Cyimbogo district.

80. On 19 April, the President of the "provisional Rwandese Government", Theodore Sindikubwabo, spoke on the radio and called for the killing of "accomplices" in Butare. The Presidential Guard flew in that night and dug pits, filled them with burning tyres, and pushed Tutsis into them. They also executed Tutsis near the National University for the next three days, killing thousands.

81. Over 2,800 people, most of them Tutsis, were killed at Mukarange Roman Catholic parish, Kibungo Prefecture, Rwamagana district. Interahamwe militia used grenades, machine-guns, R-4 rockets and machetes in the massacre.

82. In Gikongoro, 88 students were singled out because of their Tutsi origin and slaughtered at their school.

83. On 23 April, Government troops and militia murdered 170 Tutsi patients and staff at Butare hospital. Doctors of Médecins sans frontières witnessed these acts.

84. On 29 April, military and militia killed over 300 of 5,000 hostages held in the Cyangugu stadium.

85. On 30 April, the Rwandese Government radio called on people to take up arms against "the enemy" (the Tutsis) all over Rwanda. Leaders of the Hutu militia called upon their members to finish the "nettoyage" (cleansing) of Rwanda of all Tutsi.

86. On 1 May, at the Butare orphanage, the militia murdered 21 orphans, segregated on account of their Tutsi origin, along with 13 Rwandese Red Cross volunteers who tried to protect them.

87. Beginning on 11 May, the militia and the military took hundreds of Tutsis from the Cyangugu stadium into the countryside by bus, where they were murdered.

88. In Cyahinda, over 5,800 Tutsis who had taken refuge in a church were murdered. Only 200 people survived the massacre.

89. On 16 May, Rwandese Government troops and militia removed hundreds of Tutsis from the church centre of Kabgayi and executed them, while only a few kilometres away the Rwandese "Minister of Defence" of the "provisional Government", Augustin Bizimana, told reporters the massacres had stopped.

90. In Kigali, thousands of Tutsis sought refuge in the Amahoro Stadium, the Hotel des Milles Collines, the Sainte Famille Church and other locations. Militia members entered at night on a number of occasions, removed hundreds of Tutsis from the Stadium and church, then murdered them.

91. The genocidal massacres in Rwanda continued into July 1994. The Commission could cite many more massacres committed by Rwandese Government soldiers and Hutu militia against the Tutsis of Rwanda.

92. The mass murder of Tutsis continued throughout areas controlled by the Rwandese "provisional Government". Reliable estimates put the number of persons murdered in Rwanda between 6 April 1994 and 15 July 1994 at half a million.

C. Violations of international humanitarian law and of human rights law attributed to the Rwandese Patriotic Front

93. The exiled former Government submitted to the Commission lists of persons alleged to have been massacred by RPF soldiers. In particular, it is alleged that 11 Hutus were murdered in August, including certain persons returning from exile, and that 27 Hutu families were massacred between 2 and 12 April 1994. The former Government also provided a document that alleges the existence of mass graves attributed to RPF elements, including 8 in Kigali.

94. Other lists were submitted by witnesses and parents of Hutu victims, now refugees in Zaire: about 300 persons were alleged to have been killed by the inkotanyi (regulars of the RPF forces) in Byumba Prefecture. In the commune of Bwisige, it is alleged that the following massacres were perpetrated: 30 Hutus killed in Bwisiga sector; 49 in Nyarurama sector; 52 in Kabongoya sector; 52 in Buhanga sector; 22 in Gihuke sector; 26 in Muti sector; and 25 in Karehe sector. The former Government has alleged that, in Kigali Prefecture, RPF elements massacred 102 Hutus in the communes of Rutongo, Shorgi, Mutwa and Rwerere from April to June 1994.

95. The Commission of Experts has concluded that there exist substantial grounds to conclude that mass murders, summary executions, breaches of international humanitarian law and crimes against humanity were also perpetrated by Tutsi elements against Hutu individuals and that allegations concerning these acts should be investigated further.

96. As it was finalizing its preliminary report, the Commission of Experts received reports of violations of the right to life in Rwanda perpetrated in the period from August to early September 1994. The Secretary-General asked the Commission to investigate these reports.

97. The Commission therefore renewed its efforts to verify allegations that certain atrocities committed in Rwanda by the current Government might be systematic or widespread, by applying the same standards of impartiality and independence that it has applied to all other investigations concerning the situation in Rwanda. Accordingly, it took all available measures during its second mission to Rwanda to investigate allegations against the RPF authorities.

98. For its own part, the Commission was unable, owing to a lack of time, to uncover any evidence to indicate that Tutsi elements perpetrated acts committed with intent to destroy the Hutu ethnic group as such within the meaning of the Genocide Convention of 1948. Nor could the Commission find evidence to indicate that killings of Hutus perpetrated by a number of individual RPF soldiers were systematic, or were sponsored, or even approved of, by Government officials or army commanders.

99. At a meeting with the Commission of Experts in Kigali, General Paul Kagame, Vice-President and Minister of Defence of the Government of Rwanda, gave his solemn promise to continue all cooperation with the Commission of Experts and with the Prosecution. Moreover, he informed the Commission that the Government had detained about 70 RPF soldiers, including three majors, that the Government intended to try and punish for private acts of revenge exacted against Hutus, acts the Government insisted were not only unauthorized, but subject to heavy military discipline and punishment. General Kagame indicated that both he and his Government welcomed the scrutiny of the international community in that regard and he reiterated his every intention to bring to a halt any such breaches of military discipline in his own ranks.

100. Nevertheless, the Commission of Experts remains disturbed by ongoing violence committed by some RPF soldiers and recommends that investigation of violations of international humanitarian law and of human rights law attributed to the Rwandese Patriotic Front be continued by the Prosecutor for the International Tribunal for Rwanda. Accordingly, the Commission shall turn over all relevant files to the Secretary-General.

IV. ISSUES OF LAW CONCERNING INDIVIDUAL RESPONSIBILITY IN INTERNATIONAL LAW

A. Applicability of international law to the situation in Rwanda

101. The applicability of international legal norms to the situation in Rwanda in the period from 6 April to 15 July 1994 depends upon: (a) the legal status of the conflict (determined by the factual situation in Rwanda and the legal norms in force); (b) the scope ratione materiae of specific norms of international human rights law and international humanitarian law (determined by their content); and (c) the legal status of these norms (determined by their sources of law).

102. With these indices in mind, it is clear that international legal norms providing for individual responsibility for serious human rights violations were breached in Rwanda during the period from 6 April to 15 July 1994.

Specifically, certain individuals are responsible for breaches of: (a) norms of international humanitarian law on a systematic, widespread and flagrant basis; (b) norms prohibiting crimes against humanity; and (c) norms prohibiting acts of genocide.

103. The relevant norms of international law providing for individual responsibility overlap to a certain extent. Consequently, in some instances a single act may qualify as a crime on more than one separate and distinct legal ground.

B. Breaches of international humanitarian law, particularly those perpetrated against the civilian population

104. Rwanda succeeded to the Geneva Conventions of 12 August 1949 4/ on 5 May 1964 and acceded to Protocols additional thereto of 1977 5/ on 19 November 1984. 6/

105. The applicability of international humanitarian law hinges on the status of the conflict.

106. First, there must be an armed conflict. There can be no doubt that the conflict in Rwanda was an armed conflict as evidenced by the means and methods employed by those involved, and as evidenced by the sheer scale of atrocities committed during the period from 6 April to 15 July 1994.

107. Second, precisely which rules of international humanitarian law apply to the armed conflict in Rwanda between 6 April and 15 July depends on whether the armed conflict is to be considered an international armed conflict or a non-international conflict. 7/

108. The armed conflict between 6 April and 15 July 1994 qualifies as a non-international armed conflict. The use of armed force had been carried out within the territorial borders of Rwanda and did not involve the active participation of any other State. Third State involvement entailed peacemaking and humanitarian functions rather than belligerent action.

109. This is not to say that the armed conflict in Rwanda has not had a serious effect on neighbouring States or on the international community as a whole. There have been serious repercussions on the social and political welfare and internal stability of neighbouring States. For example, the massive influx of refugees into these neighbouring territories has created significant problems. Moreover, the conflict in Rwanda makes it an obvious threat to international peace and security within the meaning of Chapter VII of the Charter of the United Nations. None the less, these aspects do not alter the basic character of the armed conflict in Rwanda during the period from 6 April to 15 July 1994 as predominately non-international in character.

110. Accordingly, the obligations set out in common article 3 of the four Geneva Conventions of 1949 governing situations "not of an international character", as well as Protocol II additional thereto 8/ (intended to develop and supplement

common article 3 but without modifying its existing conditions of application) 9/ are applicable.

111. At the other end of the scale, the non-international armed conflict in Rwanda cannot be considered to be of a purely internal nature within the meaning of article 1, paragraph 2 of Protocol II. The violence in Rwanda has far exceeded mere "internal disturbances and tensions, such as riots, isolated and sporadic acts of violence [or] other acts of a similar nature". 10/ The evidence indicates very clearly that the violence perpetrated in Rwanda was carried out not by small groups in a spontaneous fashion, but by individuals under a responsible command that conducted "sustained and concerted military operations" 11/ involving strategic planning and tactical sophistication. 12/

112. Common article 3 of the Geneva Conventions of 12 August 1949 prohibits "at any time and in any place whatsoever":

(a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) Taking of hostages;

(c) Outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples,

against "persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause".

113. Article 3, paragraph 2, provides that "the wounded and sick shall be collected and cared for".

114. Article 4 of Protocol II, which supplements article 3 common to the four Geneva Conventions, prohibits the following acts against "all persons who do not take a direct part or who have ceased to take part in hostilities":

(a) Violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

(b) Collective punishments;

(c) Taking of hostages;

(d) Acts of terrorism;

(e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;

(f) Slavery and the slave trade in all their forms;

(g) Pillage;

(h) Threats to commit any of the foregoing acts.

115. Article 4, paragraph 3 (c) of Protocol II provides that:

> "Children shall be provided with the care and aid they require, and in particular: children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities".

116. Article 5 of Protocol II provides that "the following provisions shall be respected as a minimum with regard to persons deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained":

(a) The wounded and sick shall be treated in accordance with article 7;

(b) The persons referred to in this paragraph shall, to the same extent as the local civilian population, be provided with food and drinking water and be afforded safeguards as regards health and hygiene and protection against the rigours of the climate and the dangers of the armed conflict;

(c) They shall be allowed to receive individual or collective relief;

(d) They shall be allowed to practise their religion and, if requested and appropriate, to receive spiritual assistance from persons, such as chaplains, performing religious functions;

(e) They shall, if made to work, have the benefit of working conditions and safeguards similar to those enjoyed by the local civilian population.

117. Article 7, paragraph 1, requires that:

> "All the wounded, sick and shipwrecked, whether or not they have taken part in the armed conflict, shall be respected and protected."

118. Article 7, paragraph 2, provides that:

> "In all circumstances they shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones."

119. Article 8 requires that:

"Whenever circumstances permit, and particularly after an engagement, all possible measures shall be taken, without delay, to search for and collect the wounded, sick and shipwrecked, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead, prevent their being despoiled, and decently dispose of them."

120. Article 9 provides that medical and religious personnel shall be respected and protected. Article 11 provides that medical units and transports shall be respected and protected at all times and shall not be the object of attack.

121. Part IV of Protocol II relates to protection of the civilian population. Article 13 provides that:

"1. The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances.

"2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.

"3. Civilians shall enjoy the protection afforded by this Part, unless and for such time as they take a direct part in hostilities."

122. Article 14 guarantees the protection of objects indispensable to the survival of the civilian population. Article 16 provides for the protection of cultural objects and places of worship.

123. Article 17, paragraph 1, provides that:

"The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition."

124. The Commission of Experts has determined that common article 3 of the Geneva Conventions of 1949 and the provisions cited above of Protocol II additional to the Geneva Conventions of 1949 were violated in Rwanda during the period from 6 April to 15 July 1994 on a systematic, widespread and flagrant basis.

C. Crimes against humanity

125. To understand whether and to what extent norms prohibiting crimes against humanity apply to the armed conflict in Rwanda, it is necessary to consider the content and legal status of "crimes against humanity" as a norm of international law.

126. "Crimes against humanity" as a legal category is not as clear in content or legal status as "genocide" or breaches of the Geneva Conventions or Protocols additional thereto. A certain level of ambiguity in the content and legal status of "crimes against humanity" derives partly from its formulation in the Nuremberg Charter and partly from the way it was interpreted by the Nuremberg Tribunal.

127. "Crimes against humanity" were cast in article 6 (c) of the Nuremberg Charter as:

> "murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population before or during the [Second World] war, or persecutions on political, racial, or religious grounds in execution of or in connection with any crime within the jurisdiction of the [Nuremberg] Tribunal, whether or not in violation of the domestic law of the country where perpetrated."

It was unclear at the outset as to whether norms prohibiting "crimes against humanity" were intended to overlap with norms prohibiting war crimes or whether they were supposed to be independent juridical concepts.

128. Article 6 (c) of the Nuremberg Charter does narrow the concept of "crimes against humanity" considerably. As Sunga 13/ states:

> "In particular, the acts must have been committed against civilians rather than soldiers (whereas norms prohibiting war crimes restrict actions against soldiers as well), and the acts must have been committed 'either before or during the war' (although what period of time before the war is not specified). A Protocol of 6 October 1945, done in Berlin, amended the original version of article 6 (c). The original provision contained a semicolon which followed the word 'war' which seemed to imply that murder, etc., could be considered as crimes against humanity independent of the jurisdiction of the Tribunal. However, the semicolon was replaced with a comma by the Protocol. The result was to imply that crimes against humanity were to be interpreted to import liability only for acts connected to the war."

Moreover, the United Nations War Crimes Committee on Facts and Evidence in 1946 sought to clear up any ambiguity by stating that:

> "crimes against humanity as referred to in the Four Power Agreement of 8 August 1945, were war crimes within the jurisdiction of the [United Nations War Crimes] Commission." 14/

129. Consequently, "crimes against humanity" were interpreted by the Nuremberg Tribunal as offences that were connected to the Second World War, rather than to any situations that might have existed prior to it.

130. If the normative content of "crimes against humanity" had remained frozen in its Nuremberg form, then it could not possibly apply to the situation in Rwanda that existed between 6 April and 15 July 1994 because there was not a "war" in the classic sense of an inter-State or international armed conflict.

131. However, the normative content of "crimes against humanity", originally employed by the Nuremberg Tribunal for its own specific purposes in connection with the Second World War, has undergone substantial evolution since the end of the war.

132. First, even the Nuremberg Tribunal itself had established that "crimes against humanity" covered certain acts perpetrated against civilians, including those with the same nationality as the perpetrator. Indeed, "crimes against humanity" as a normative concept finds its very origins in "principles of humanity" first invoked in the early 1800s by a State to denounce another State's human rights violations of its own citizens. Thus, "crimes against humanity" as a juridical category was conceived early on to apply to individuals regardless of whether or not the criminal act was perpetrated during a state of armed conflict and regardless of the nationality of the perpetrator or the victim.

133. Second, the content and legal status of the norm since Nuremberg has been broadened and expanded through certain international human rights instruments adopted by the United Nations since 1945. In particular, the Genocide Convention of 1948 affirms the legal validity of some of the normative content of "crimes against humanity" as conceived in article 6 (c) of the Nuremberg Charter, but does not overtake it. The International Convention on the Suppression and Punishment of the Crime of Apartheid, adopted by the General Assembly on 30 November 1973, 15/ refers in article 1 to apartheid as a "crime against humanity".

134. Third, the Commission of Experts on the Former Yugoslavia, established pursuant to Security Council resolution 780 (1992), stated that it considered crimes against humanity to be:

> "gross violations of fundamental rules of humanitarian and human rights law committed by persons demonstrably linked to a party to the conflict, as part of an official policy based on discrimination against an identifiable group of persons, irrespective of war and the nationality of the victim." 16/

This view finds support in the writings of publicists. 17/

135. The Commission of Experts on Rwanda considers that "crimes against humanity" are gross violations of fundamental rules of humanitarian and human rights law committed by persons demonstrably linked to a party to the armed conflict, as part of an official policy based on discrimination against an identifiable group of persons, irrespective of war and the nationality of the victim, and includes acts such as the following:

- Murder;
- Extermination;
- Enslavement;
- Deportation and population transfer;

- Imprisonment;

- Torture;

- Rape;

- Persecutions on political, racial and religious grounds;

- Other inhumane acts;

- Apartheid.

136. Disturbing reports have been filed with the Commission of Experts that document the abduction and rape of women and girls in Rwanda during the period of armed conflict in Rwanda. 18/

137. The Commission of Experts considers rape to be both an egregious breach of international humanitarian law and a crime against humanity.

138. It is valuable to reflect a little on the juridical basis of international legal norms prohibiting rape in order to come to a full appreciation of their present status in international law.

139. The Nuremberg Charter does not explicitly list "rape" as a war crime or crime against humanity.

140. Neither does article 3 common to the four Geneva Conventions of 1949 refer to "rape". Common article 3 refers to violence to life and person, mutilation, cruel treatment, torture, outrages upon personal dignity and to humiliating and degrading treatment but does not refer to "rape" or "sexual assault". Nor do the provisions on "grave breaches" of the Geneva Conventions refer to "rape". 19/ The "grave breaches" provisions are those that provide specifically for individual criminal responsibility in case of especially serious violations of the Geneva Conventions.

141. However, despite the absence of explicit reference to "rape" in those provisions, the international community appears to regard rape as covered in common article 3 and also by the "grave breaches" provisions. Indeed, the International Committee of the Red Cross took the position that as early as 1958 that "inhuman treatment" as referred to in article 147 of the fourth Geneva Convention should be interpreted in the light of article 27 which prohibits rape. 20/ Article 27 provides a mandatory obligation that:

> "Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault."

The 1977 Protocols, which revise and supplement the 1949 Geneva Conventions, contain provisions referring specifically to "rape". Especially relevant to the situation in Rwanda is Additional Protocol IV of 1977 relating to the protection of victims of non-international armed conflicts, which provides that:

> "outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault"

are "prohibited at any time and in any place whatsoever." 21/

142. In any event, the statute of the International Tribunal for Rwanda, adopted by the Security Council in its resolution 955 (1994) of 8 November 1994, specifically includes "rape" as a "crime against humanity" in article 3 (g).

143. Even if the statute had not made explicit and specific reference to "rape" as a "crime against humanity", the international community has recognized that, under certain circumstances, rape constitutes a crime against humanity.

144. The Special Rapporteur of the Commission on Human Rights on the former Yugoslavia expressed in very clear terms the relation of rape as an instrument of social control to ethnic cleansing in his 1993 report:

> "Rape is an abuse of power and control in which the rapist seeks to humiliate, shame, degrade and terrify the victim. In all his reports, the Special Rapporteur has emphasized the variety of methods which are used to achieve ethnic cleansing. Rape is one of these methods, as has been stated from the outset. In this context, rape has been used not only as an attack on the individual victim, but is intended to humiliate, shame, degrade and terrify the entire ethnic group." 22/

145. The Commission of Experts wishes to express its endorsement of this position and to make clear that it considers rape to be both a breach of international humanitarian law and a crime against humanity. There are clear cases where rape, which undoubtedly constitutes "serious bodily or mental harm", is perpetrated under a responsible command as a systematic policy alongside or as part of a larger policy that is "committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such". The Commission of Experts recommends that the Prosecutor explore fully the relation between the policy of systematic rape under a responsible command as a crime against humanity on the one hand, and such a policy as a crime of genocide, on the other.

146. The Commission has determined that there exists ample grounds to conclude that "crimes against humanity" were committed by each side to the armed conflict in Rwanda.

D. Genocide

147. The term "genocide" was coined by Raphael Lemkin, a lawyer of Polish and Jewish origins, in his 1944 book entitled Axis Rule in Occupied Europe. 23/ It is based on the Greek word genos meaning "race" and the Latin word cide which refers to "killing".

148. On 11 December 1946, the General Assembly adopted unanimously resolution 96 (I), 24/ which refers to genocide as "the denial of the right of existence of entire human groups". In resolution 96-I the Assembly also recognized genocide

as a crime under international law and appealed to Member States to enact legislation for the prevention and punishment of genocide. 25/

149. On 9 December 1948, the Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the General Assembly. 26/ It entered into force on 12 January 1951 in accordance with article XIII and, as a treaty, created legal norms binding the States parties to it.

150. Before the Genocide Convention was adopted in 1948, genocide was not specifically prohibited by international law except in laws of war. 27/ Article I of the Genocide Convention which affirms that "genocide whether committed in time of peace or in time of war, is a crime under international law" therefore represented an advance in international law. Thus, the emergence of international legal norms prohibiting genocide that apply without regard to the existence of the status of an armed conflict dates only to the end of the Second World War.

151. Rwanda acceded to the Genocide Convention on 16 April 1975. Rwanda has entered a reservation that states: "The Rwandese Republic does not consider itself as bound by article IX of the Convention." Article IX provides that:

> "[d]isputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute."

152. Even if Rwanda had not ratified the Genocide Convention, it would be bound by the prohibition of genocide which has, since 1948, developed into a norm of customary international law. Moreover, it is universally recognized by the international community that the prohibition of genocide has attained the status of jus cogens. It therefore has a peremptory status. 28/ For these reasons, the prohibition of genocide as expressed in the Genocide Convention applies to all members of the international community rather than merely to parties to the Convention. 29/

153. Article II provides that:

> "In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical [sic], racial, or religious group, as such:
>
> (a) Killing members of the group;
>
> (b) Causing serious bodily or mental harm to members of the group;
>
> (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
>
> (d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group."

154. Article III provides that "the following acts shall be punishable:

'(a) Genocide;

(b) Conspiracy to commit genocide;

(c) Direct and public incitement to commit genocide;

(d) Attempt to commit genocide;

(e) Complicity in genocide.'"

155. Article IV provides that "persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals."

156. The Commission of Experts has determined that there are more than ample grounds to conclude that every provision laid out in article III of the Genocide Convention has been violated in Rwanda in the period from 6 April to 15 July 1994 in respect of a specific ethnic group as such. Furthermore, abundant and compelling evidence supports the conclusion that prior to 6 April 1994 Hutu elements conspired to commit genocide against the Tutsi group in violation of article III of the Genocide Convention of 1948. It should be recalled that the Genocide Convention applies in time of war or peace and that therefore its provisions apply to the situation in Rwanda regardless of the existence and status of any armed conflict there.

1. The issue of national, ethnic, racial or religious groups

157. In the view of the authors of the precursor to the Genocide Convention, General Assembly resolution 96 (I), the purpose of the Convention was to prevent the destruction of racial, national, linguistic, religious or political groups of human beings. However, in the Genocide Convention as it was finally adopted, political groups were conspicuously not on the list because some States feared that the inclusion of such an arguably unstable category would create an obstacle to the Convention's ratification. 30/

158. This may appear to leave the door slightly open for perpetrators to argue that the killings that they ordered or carried out were directed against political groups and not any of the groups listed in article II. Alternatively, it may be argued that the killings were politically motivated and not with the intent to destroy a national, ethnic, racial or religious group, as such.

159. However, this attempt at a defence is bound to fail, as it should, because the presence of political motive does not negate the intent to commit genocide if such intent is established in the first instance. 31/ On a related point, to recognize that there exists discrimination on racial or ethnic grounds, it is not necessary to presume or posit the existence of race or ethnicity itself as a scientifically objective fact.

2. Issues concerning numbers of persons killed and the issue of specific intent to commit genocide

160. Because the crime of genocide is qualified by the intention to destroy the group as such, genocide cases brought before the international tribunal would have to focus on elements of proof that tie the act of killing to the intention of the accused to the victim's national, ethnic, racial or religious background.

161. The Commission of Experts considers it valuable here to ponder a number of issues concerning the criminal intent to commit genocide as defined in article II that will likely arise in trials of individuals for acts of genocide.

162. Does a particular minimum number of persons have to be killed for an act of genocide to be established in the individual case?

163. Let us suppose for example, that an individual is brought before the Tribunal for having committed an act of genocide. Let us further suppose that: (a) the accused killed one single person; and (b) there is sufficient evidence to prove that the accused was guilty of murder under the laws of Rwanda.

164. First, this raises the issue as to whether article II of the Genocide Convention requires the Prosecution to prove intention to destroy the whole group or whether intention to destroy part of the group is sufficient. In individual cases, there may be no evidence of express intention to commit genocide. In these cases, it will likely be critical to prove that the act of killing constituted an act of genocide as opposed to ordinary murder.

165. The interpretation of article II of the Convention on this point would likely have significant ramifications for the breadth of criminal prosecutions for the International Tribunal for Rwanda for the following reason. If article II were interpreted to mean that the intention to destroy the group as such applied only to the entire group and not to part of the group, it could mean that prosecutions would be limited to those individuals suspected of directing and planning genocide with the requisite intent. It could mean that the individual suspect who could be proved to have carried out the act of killing, but could not be proved to have acted with the intent to destroy the whole group as such, would have to be indicted on some other ground or left unpunished.

166. Recourse to the travaux préparatoires sheds little light on the intention of the drafters of the Genocide Convention. However, on a plain reading of article II, the word "or" indicates that intention to destroy part of the group is sufficient for the crime of genocide to have been committed. However, as Bryant has opined:

> "Unless the intent were express, ... the intent to destroy the group would be difficult to prove, except in those instances where the number of people of the group affected was significant. Practically speaking, then, the number of victims may be of evidentiary value with respect to proving the necessary intent." 12/

167. Second, there is the question as to how specific intent to commit an act of genocide (where an accused is alleged to have killed a single human being) is to be distinguished from an act of ordinary murder or the killing of several from mass murder. If the prosecution were forced to prove specific intent "to destroy the group as such" in respect of the accused in each and every case in order to rebut the defence that ordinary murder rather than genocide had been committed, it would be faced with an unreasonably high burden of proof.

168. It might seem to matter little whether an accused was found guilty of murder rather than genocide or the other way round. On the contrary, the difference could matter a great deal to the accused, to the Prosecution effort and to the community at large. In the case of genocide, the matter would come under the jurisdiction of the International Tribunal authorized to try and punish the accused according to rules of international law. However, in the case of murder, it would be the national laws and procedures of Rwanda that would apply before a duly authorized domestic court. The law applicable, including procedural fair trial guarantees, venue of the trial, even the public profile of the verdict and scale of punishment, are likely to differ significantly according to the substance of the indictment.

V. ATTRIBUTION (IMPUTABILITY)

A. Individual responsibility in international law

169. The attribution of responsibility to the individual in propria personam is not entirely new. Indeed, military trials of individuals for having committed war crimes dates back at least to 1419, as Keen documents in his work The Laws of War in the Middle Ages. 33/ There is also the international trial of Peter von Hagenbach which took place in 1474 for acts that today are considered crimes against humanity. International legal norms stipulating individual responsibility for slave trading and slave trafficking and for piracy arose out of the Congress of Vienna of 1815. Today these norms are considered part of customary international law and probably of jus cogens. 34/

170. It is true that international responsibility is predominately, even almost exclusively, centred around States rather than other entities. This should not be surprising since it is the State that is the primary subject of international law. Moreover, prior to the Nuremberg trials following the end of the Second World War, even norms prohibiting war crimes and crimes against humanity involved responsibility primarily of the State rather than of the individual directly.

171. However, the Nuremberg trials established clearly the principle that any individual, regardless of office or rank, shall be held responsible in international law for war crimes, crimes against peace or crimes against humanity. It symbolized the possibility that trials could actually be carried out and punishment enforced in modern times.

172. The principle that the individual shall be held responsible for serious violations of human rights, firmly enforced by the Nuremberg Tribunal and today universally recognized by the international community, is the same principle

that guides the operation of the International Criminal Tribunal for the former Yugoslavia and of the present Commission of Experts on Rwanda acting in conformity with United Nations Security Council resolution 935 (1994).

B. Command responsibility

173. It is a well-established principle of international law that a person who orders a subordinate to commit a violation for which there is individual responsibility is as responsible as the individual that actually carries it out. The Nuremberg Principles, adopted by the General Assembly on 11 December 1946, affirmed that even a Head of State is not free from responsibility under international law for the commission of a crime under international law. 35/

174. The principle of command responsibility has been incorporated in article IV of the Genocide Convention as laid out above (para. 155) and is expressed also in article 86, paragraph 2, of the 1977 Protocol I additional to the Geneva Conventions of 1949 relating to the protection of victims of international armed conflicts. It finds expression again in the Draft Code of Crimes against the Peace and Security of Mankind. 36/

C. Defences: superior orders, duress, mistake, military necessity and reprisal

175. Since the inception of the Nuremberg Charter it has been recognized that the existence of superior orders does not provide an individual with an exculpatory defence. 37/ Nevertheless, the existence of superior orders may be taken into account with respect to mitigation of punishment.

176. The Commission wishes to note that it considers the defences of duress and mistake of fact as possible defences to individual allegations of serious human rights violations.

VI. THE QUESTION OF CRIMINAL JURISDICTION

177. In its preliminary report, the Commission of Experts recommended that cases concerning crimes under international law committed in Rwanda should be brought under the competence of the International Criminal Tribunal for the former Yugoslavia (created pursuant to Security Council resolutions 808 (1993) and 827 (1993) and that this approach could greatly advance the cause of international criminal justice.

178. For these reasons, the Commission of Experts recommended that trials of individuals suspected of serious breaches of international humanitarian law, crimes against humanity and acts of genocide should be carried out by an international criminal tribunal.

179. The Commission of Experts recommended that the jurisdiction of the International Criminal Tribunal for the former Yugoslavia be expanded to cover

international crimes committed in Rwanda rather than to create a separate ad hoc international criminal tribunal.

180. Security Council resolution 955 (1994) of 8 November 1994, more particularly its annex, the statute of the International Tribunal for Rwanda (see appendix I), goes a long way towards meeting the Commission's recommendations concerning jurisdiction. It is designed to bring unity to the process and interpretation of international criminal law. Specifically, article 14 provides that the same rules of procedure and of evidence applicable before the International Tribunal for the former Yugoslavia shall also be adopted by the judges of the International Tribunal for Rwanda. Article 15, paragraph 3, provides that: "The Prosecutor of the International Tribunal for the Former Yugoslavia shall also serve as the Prosecutor of the International Tribunal for Rwanda." It is true that there shall be separate trial chambers: one for the former Yugoslavia and the other for Rwanda. However, it is significant that article 12, paragraph 2, of the statute provides that the members of the Appeals Chamber for the Tribunal for the former Yugoslavia shall also serve as the members of the Appeals Chamber for the Rwanda Tribunal, thus unifying the appeals process.

VII. CONCLUSIONS

181. The Commission of Experts concludes on the basis of ample evidence that individuals from both sides to the armed conflict in Rwanda during the period from 6 April 1994 to 15 July 1994 perpetrated serious breaches of international humanitarian law, in particular of obligations set forth in article 3 common to the four Geneva Conventions of 12 August 1949 and in Protocol II additional to the Geneva Conventions and relating to the protection of victims of non-international armed conflicts of 8 June 1977.

182. The Commission of Experts concludes also that ample evidence indicates that individuals from both sides to the armed conflict perpetrated crimes against humanity in Rwanda in the period mentioned above.

183. After careful deliberation, the Commission of Experts has concluded that there exists overwhelming evidence to prove that acts of genocide against the Tutsi group were perpetrated by Hutu elements in a concerted, planned, systematic and methodical way.

184. Abundant evidence shows that these mass exterminations perpetrated by Hutu elements against the Tutsi group as such, during the period mentioned above, constitute genocide within the meaning of article II of the Convention on the Prevention and Punishment of the Crime of Genocide, adopted on 9 December 1948.

185. The Commission was unable to uncover any evidence to indicate that Tutsi elements perpetrated acts committed with intent to destroy the Hutu ethnic group as such within the meaning of the Genocide Convention of 1948. The Commission was not in the position, owing to a lack of time, means and objective limits to its mandate, to uncover evidence to indicate that the killings of Hutus perpetrated by a certain number of RPF soldiers were systematic, sponsored or even approved of, by Government officials or army commanders.

186. Nevertheless, the Commission of Experts remains disturbed by ongoing violence committed by some RPF soldiers and recommends that investigation of violations of international humanitarian law and of human rights law attributed to the Rwandese Patriotic Front be continued by the Prosecutor. Accordingly, the Commission of Experts will transmit all relevant files in its possession to the Secretary-General.

187. The Commission of Experts wishes to express its gratitude to Mr. José Ayala Lasso, the United Nations High Commissioner for Human Rights, to Mr. Ibrahima Fall, Assistant Secretary-General for Human Rights, and to the staff members of the United Nations Secretariat for the concerted effort and support they gave to our Commission.

Notes

1/ The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, established by Security Council resolution 827 of 25 May 1993 will be referred to in this report as the "International Criminal Tribunal for the former Yugoslavia".

2/ General Assembly resolution 260 A III; see also United Nations, Treaty Series, vol. 28, No. I-1021, p. 278.

3/ See Report of Human Rights Watch/Africa, May 1994, p. 3.

4/ United Nations, Treaty Series, vol. 75, Nos. I-970 - I-973.

5/ Ibid., vol. 1125, Nos. I-17512 and I-17513.

6/ Even if Rwanda had not become a party to the Geneva Conventions of 1949, it is universally acknowledged that common article 3 has become part of customary international law binding non-parties to the Conventions and is very likely to have attained the status of jus cogens as well. Norms of a jus cogens have a peremptory status and do not permit any derogation or exception.

7/ Article 2 common to the four Geneva Conventions of 12 August 1949 concerns the applicability of the Conventions to all cases of declared war between two or more High Contracting Parties, even if the state of war is not recognized by one of them, and all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance. Article 3 common to the four Geneva Conventions of 12 August 1949 applies to cases of "armed conflict not of an international character occurring in the territory of one of the High Contracting Parties".

8/ Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II), adopted at Geneva on 8 June 1977, and entered into force on 7 December 1978; United Nations, Treaty Series, vol. 1125, I-17513.

9/ See Protocol II, article 1.

10/ See Protocol II, article 1, para. 2.

11/ Ibid., para. 1.

12/ Therefore, article 1 (2) of Protocol II relating to the Protection of Victims of Non-International Armed Conflicts, which provides that "This protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts", does not apply in the case of Rwanda.

13/ Sunga, Individual Responsibility in International Law for Serious Human Rights Violations, 1992. See also Reshetov, "Development of Norms of International Law on Crimes against Humanity", in The Nuremberg Trial and International Law, Ginsburgs and Kudriavtsev, eds., 1990, pp. 199-200.

14/ See Dinstein, International Criminal Law 20, Israel Law Review, 206-242 (1985), pp. 206-242, and idem, pp. 36-37.

15/ General Assembly resolution 3068 (XXVIII), annex.

16/ S/25274, annex I, para. 49.

17/ See, e.g. Reshetov, "Development of Norms of International Law on Crimes against Humanity" in The Nuremberg Trial and International Law, Ginsburgs and Kudriavtsev, eds., 1990, p. 199. See also Bassiouni, Crimes against Humanity in International Criminal Law, 1992, chap. 11.

18/ See in particular chapter 10 of the 1994 report of African Rights Watch, "Rwanda: death, despair and defiance".

19/ See article 50 of the first Geneva Convention, article 51 of the second Convention; article 130 of the third Convention; and article 147 of the fourth Convention.

20/ See in addition Meron, "Rape as a Crime Under International Humanitarian Law", American Journal of International Law 87 (1993): 424-428. See also Daes, "New Types of War Crimes and Crimes against Humanity: Violations of International Humanitarian and Human Rights Law", International Geneva Yearbook 7 (1993): 55-78 and Khushalani, Dignity and Honour of Women as Basic and Fundamental Human Rights (Dordrecht: Martinus Nijhoff, 1982).

21/ See article 4, paragraph 2 (e), of Protocol II. Moreover, article 76 of Protocol I provides that:

> "1. Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault.
>
> "2. Pregnant women and mothers having dependent infants who are arrested, detained or interned for reasons related to the armed conflict, shall have their cases considered with the utmost priority."

22/ S/25341, annex, para. 85.

23/ Axis Rule in Occupied Europe (Washington: Carnegie Endowment for International Peace, Division of International Law Publications, 1944).

24/ See "Draft Convention for the Prevention and Punishment of Genocide" (A/AC.10/42).

25/ For a good account of the drafting process of the Genocide Convention, see Nehemiah Robinson, The Genocide Convention: a Commentary, part I, pp. 17-28 (New York: World Jewish Congress, 1960).

26/ General Assembly resolution 260 A (III).

27/ See Sunga, Individual Responsibility in International Law for Serious Human Rights Violations (Dordrecht: Martinus Nijhoff, 1992). In chapter III(1), the author argues that while some acts that qualify now in international law as acts of genocide, were previously covered by norms prohibiting war crimes and crimes against humanity, these norms were considered to apply only to situations involving armed conflict. This meant that there was a gap in international law concerning mass killings and genocide committed in peacetime.

28/ Article 53 of the Vienna Convention on the Law of Treaties, 1969, provides that "a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character".

29/ This is not to say that the provisions of the entire Genocide Convention of 1948 have necessarily attained the status of jus cogens or even of customary international law. The Commission of Experts is referring here to the normative content of the rule prohibiting genocide as expressed in article II of the Convention and not to its particular material source.

30/ John Webb. "Genocide Treaty: ethnic cleansing, substantive and procedural hurdles in the application of the Genocide Convention to alleged crimes in the former Yugoslavia", Georgia Journal of International and Comparative Law, summer (1993), p. 391.

31/ Or as Leblanc observes, "Neither article II nor any other article of the Convention refers to the motives that must lie behind the Commission of such acts". Leblanc, The United States and the Genocide Convention (Durham, N.C.: Duke University Press, 1991), p. 80.

32/ Bryant, "The United States and the 1948 Genocide Convention", Harvard International Law Journal vol. XVI, No. 3 (1975): 683-704. See also Robinson, The Genocide Convention: a Commentary (New York: World Jewish Congress, 1960) and Webb, op. cit., p. 392.

33/ Keen, The Laws of War in the Middle Ages (London: Routledge & Kegan Paul) 1965.

34/ See Sunga, op. cit., and, generally, Bassiouni, Crimes against humanity (Dordrecht: Martinus Nijhoff, 1992).

35/ See General Assembly resolution 95 (I) of 11 December 1946.

36/ See Official Records of the General Assembly, Forty-sixth Session, Supplement No. 10 (A/46/10), chap. IV, sect. D.

37/ Article 8 of the Nuremberg Charter provides that: "The fact that the defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determine that justice so requires."

Appendix I

Statute of the International Tribunal for Rwanda

Having been established by the Security Council acting under Chapter VII of the Charter of the United Nations, the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994 (hereinafter referred to as "the International Tribunal for Rwanda") shall function in accordance with the provisions of the present Statute.

Article 1

Competence of the International Tribunal for Rwanda

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994, in accordance with the provisions of the present Statute.

Article 2

Genocide

1. The International Tribunal for Rwanda shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article.

2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.

3. The following acts shall be punishable:

(a) Genocide;

(b) Conspiracy to commit genocide;

(c) Direct and public incitement to commit genocide;

(d) Attempt to commit genocide;

(e) Complicity in genocide.

Article 3

Crimes against humanity

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:

(a) Murder;

(b) Extermination;

(c) Enslavement;

(d) Deportation;

(e) Imprisonment;

(f) Torture;

(g) Rape;

(h) Persecutions on political, racial and religious grounds;

(i) Other inhumane acts.

Article 4

Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II

The International Tribunal for Rwanda shall have the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include, but shall not be limited to:

(a) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

(b) Collective punishments;

(c) Taking of hostages;

(d) Acts of terrorism;

(e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;

(f) Pillage;

(g) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples;

(h) Threats to commit any of the foregoing acts.

Article 5

Personal jurisdiction

The International Tribunal for Rwanda shall have jurisdiction over natural persons pursuant to the provisions of the present Statute.

Article 6

Individual criminal responsibility

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute, shall be individually responsible for the crime.

2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

3. The fact that any of the acts referred to in articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal for Rwanda determines that justice so requires.

Article 7

Territorial and temporal jurisdiction

The territorial jurisdiction of the International Tribunal for Rwanda shall extend to the territory of Rwanda including its land surface and airspace as well as to the territory of neighbouring States in respect of serious violations of international humanitarian law committed by Rwandan citizens. The temporal jurisdiction of the International Tribunal for Rwanda shall extend to a period beginning on 1 January 1994 and ending on 31 December 1994.

Article 8

Concurrent jurisdiction

1. The International Tribunal for Rwanda and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994.

2. The International Tribunal for Rwanda shall have primacy over the national courts of all States. At any stage of the procedure, the International Tribunal for Rwanda may formally request national courts to defer to its competence in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal for Rwanda.

Article 9

Non bis in idem

1. No person shall be tried before a national court for acts constituting serious violations of international humanitarian law under the present Statute, for which he or she has already been tried by the International Tribunal for Rwanda.

2. A person who has been tried by a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by the International Tribunal for Rwanda only if:

(a) The act for which he or she was tried was characterized as an ordinary crime; or

(b) The national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or the case was not diligently prosecuted.

3. In considering the penalty to be imposed on a person convicted of a crime under the present Statute, the International Tribunal for Rwanda shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served.

Article 10

Organization of the International Tribunal for Rwanda

The International Tribunal for Rwanda shall consist of the following organs:

(a) The Chambers, comprising two Trial Chambers and an Appeals Chamber;

(b) The Prosecutor; and

(c) A Registry.

Article 11

Composition of the Chambers

The Chambers shall be composed of eleven independent judges, no two of whom may be nationals of the same State, who shall serve as follows:

(a) Three judges shall serve in each of the Trial Chambers;

(b) Five judges shall serve in the Appeals Chamber.

Article 12

Qualification and election of judges

1. The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. In the overall composition of the Chambers due account shall be taken of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

2. The members of the Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Law Committed in the Territory of the Former Yugoslavia since 1991 (hereinafter referred to as "the International Tribunal for the Former Yugoslavia") shall

also serve as the members of the Appeals Chamber of the International Tribunal for Rwanda.

3. The judges of the Trial Chambers of the International Tribunal for Rwanda shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

(a) The Secretary-General shall invite nominations for judges of the Trial Chambers from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters;

(b) Within thirty days of the date of the invitation of the Secretary-General, each State may nominate up to two candidates meeting the qualifications set out in paragraph 1 above, no two of whom shall be of the same nationality and neither of whom shall be of the same nationality as any judge on the Appeals Chamber;

(c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than twelve and not more than eighteen candidates, taking due account of adequate representation on the International Tribunal for Rwanda of the principal legal systems of the world;

(d) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect the six judges of the Trial Chambers. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-Member States maintaining permanent observer missions at United Nations Headquarters, shall be declared elected. Should two candidates of the same nationality obtain the required majority vote, the one who received the higher number of votes shall be considered elected.

4. In the event of a vacancy in the Trial Chambers, after consultation with the Presidents of the Security Council and of the General Assembly, the Secretary-General shall appoint a person meeting the qualifications of paragraph 1 above, for the remainder of the term of office concerned.

5. The judges of the Trial Chambers shall be elected for a term of four years. The terms and conditions of service shall be those of the judges of the International Tribunal for the Former Yugoslavia. They shall be eligible for re-election.

Article 13

Officers and members of the Chambers

1. The judges of the International Tribunal for Rwanda shall elect a President.

2. After consultation with the judges of the International Tribunal for Rwanda, the President shall assign the judges to the Trial Chambers. A judge shall serve only in the Chamber to which he or she was assigned.

3. The judges of each Trial Chamber shall elect a Presiding Judge, who shall conduct all of the proceedings of that Trial Chamber as a whole.

Article 14

Rules of procedure and evidence

The judges of the International Tribunal for Rwanda shall adopt, for the purpose of proceedings before the International Tribunal for Rwanda, the rules of procedure and evidence for the conduct of the pre-trial phase of the proceedings, trials and appeals, the admission of evidence, the protection of victims and witnesses and other appropriate matters of the International Tribunal for the Former Yugoslavia with such changes as they deem necessary.

Article 15

The Prosecutor

1. The Prosecutor shall be responsible for the investigation and prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994.

2. The Prosecutor shall act independently as a separate organ of the International Tribunal for Rwanda. He or she shall not seek or receive instructions from any Government or from any other source.

3. The Prosecutor of the International Tribunal for the Former Yugoslavia shall also serve as the Prosecutor of the International Tribunal for Rwanda. He or she shall have additional staff, including an additional Deputy Prosecutor, to assist with prosecutions before the International Tribunal for Rwanda. Such staff shall be appointed by the Secretary-General on the recommendation of the Prosecutor.

Article 16

The Registry

1. The Registry shall be responsible for the administration and servicing of the International Tribunal for Rwanda.

2. The Registry shall consist of a Registrar and such other staff as may be required.

3. The Registrar shall be appointed by the Secretary-General after consultation with the President of the International Tribunal for Rwanda. He or she shall serve for a four-year term and be eligible for reappointment. The

terms and conditions of service of the Registrar shall be those of an Assistant Secretary-General of the United Nations.

4. The staff of the Registry shall be appointed by the Secretary-General on the recommendation of the Registrar.

Article 17

Investigation and preparation of indictment

1. The Prosecutor shall initiate investigations ex-officio or on the basis of information obtained from any source, particularly from Governments, United Nations organs, intergovernmental and non-governmental organizations. The Prosecutor shall assess the information received or obtained and decide whether there is sufficient basis to proceed.

2. The Prosecutor shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Prosecutor may, as appropriate, seek the assistance of the State authorities concerned.

3. If questioned, the suspect shall be entitled to be assisted by counsel of his or her own choice, including the right to have legal assistance assigned to the suspect without payment by him or her in any such case if he or she does not have sufficient means to pay for it, as well as to necessary translation into and from a language he or she speaks and understands.

4. Upon a determination that a prima facie case exists, the Prosecutor shall prepare an indictment containing a concise statement of the facts and the crime or crimes with which the accused is charged under the Statute. The indictment shall be transmitted to a judge of the Trial Chamber.

Article 18

Review of the indictment

1. The judge of the Trial Chamber to whom the indictment has been transmitted shall review it. If satisfied that a prima facie case has been established by the Prosecutor, he or she shall confirm the indictment. If not so satisfied, the indictment shall be dismissed.

2. Upon confirmation of an indictment, the judge may, at the request of the Prosecutor, issue such orders and warrants for the arrest, detention, surrender or transfer of persons, and any other orders as may be required for the conduct of the trial.

Article 19

Commencement and conduct of trial proceedings

1. The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

2. A person against whom an indictment has been confirmed shall, pursuant to an order or an arrest warrant of the International Tribunal for Rwanda, be taken into custody, immediately informed of the charges against him or her and transferred to the International Tribunal for Rwanda.

3. The Trial Chamber shall read the indictment, satisfy itself that the rights of the accused are respected, confirm that the accused understands the indictment, and instruct the accused to enter a plea. The Trial Chamber shall then set the date for trial.

4. The hearings shall be public unless the Trial Chamber decides to close the proceedings in accordance with its rules of procedure and evidence.

Article 20

Rights of the accused

1. All persons shall be equal before the International Tribunal for Rwanda.

2. In the determination of charges against him or her, the accused shall be entitled to a fair and public hearing, subject to article 21 of the Statute.

3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.

4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her;

(b) To have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing;

(c) To be tried without undue delay;

(d) To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interests of

justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;

(f) To have the free assistance of an interpreter if he or she cannot understand or speak the language used in the International Tribunal for Rwanda;

(g) Not to be compelled to testify against himself or herself or to confess guilt.

Article 21

Protection of victims and witnesses

The International Tribunal for Rwanda shall provide in its rules of procedure and evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim's identity.

Article 22

Judgement

1. The Trial Chambers shall pronounce judgements and impose sentences and penalties on persons convicted of serious violations of international humanitarian law.

2. The judgement shall be rendered by a majority of the judges of the Trial Chamber, and shall be delivered by the Trial Chamber in public. It shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.

Article 23

Penalties

1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of Rwanda.

2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

Article 24

Appellate proceedings

1. The Appeals Chamber shall hear appeals from persons convicted by the Trial Chambers or from the Prosecutor on the following grounds:

(a) An error on a question of law invalidating the decision; or

(b) An error of fact which has occasioned a miscarriage of justice.

2. The Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chambers.

Article 25

Review proceedings

Where a new fact has been discovered which was not known at the time of the proceedings before the Trial Chambers or the Appeals Chamber and which could have been a decisive factor in reaching the decision, the convicted person or the Prosecutor may submit to the International Tribunal for Rwanda an application for review of the judgement.

Article 26

Enforcement of sentences

Imprisonment shall be served in Rwanda or any of the States on a list of States which have indicated to the Security Council their willingness to accept convicted persons, as designated by the International Tribunal for Rwanda. Such imprisonment shall be in accordance with the applicable law of the State concerned, subject to the supervision of the International Tribunal for Rwanda.

Article 27

Pardon or commutation of sentences

If, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the International Tribunal for Rwanda accordingly. There shall only be pardon or commutation of sentence if the President of the International Tribunal for Rwanda, in consultation with the

judges, so decides on the basis of the interests of justice and the general principles of law.

Article 28

Cooperation and judicial assistance

1. States shall cooperate with the International Tribunal for Rwanda in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law.

2. States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including, but not limited to:

(a) The identification and location of persons;

(b) The taking of testimony and the production of evidence;

(c) The service of documents;

(d) The arrest or detention of persons;

(e) The surrender or the transfer of the accused to the International Tribunal for Rwanda.

Article 29

The status, privileges and immunities of the International Tribunal for Rwanda

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 shall apply to the International Tribunal for Rwanda, the judges, the Prosecutor and his or her staff, and the Registrar and his or her staff.

2. The judges, the Prosecutor and the Registrar shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

3. The staff of the Prosecutor and of the Registrar shall enjoy the privileges and immunities accorded to officials of the United Nations under articles V and VII of the Convention referred to in paragraph 1 of this article.

4. Other persons, including the accused, required at the seat or meeting place of the International Tribunal for Rwanda shall be accorded such treatment as is necessary for the proper functioning of the International Tribunal for Rwanda.

Article 30

Expenses of the International Tribunal for Rwanda

The expenses of the International Tribunal for Rwanda shall be expenses of the Organization in accordance with Article 17 of the Charter of the United Nations.

Article 31

Working languages

The working languages of the International Tribunal shall be English and French.

Article 32

Annual report

The President of the International Tribunal for Rwanda shall submit an annual report of the International Tribunal for Rwanda to the Security Council and to the General Assembly.

Appendix II

Methods of work

I. INTERNAL METHODS OF WORK OF THE COMMISSION

1. The internal methods of work of the Commission are defined in its internal rules of procedure (see appendix III).

2. The Commission anticipates holding four (4) sessions during which it will examine a certain number of issues of substance, procedure and organization relating to its mandate.

3. At its last session, the Commission will adopt its final report.

4. The Commission, to the extent possible, will present to the Secretary-General of the United Nations its final report no later than 30 November 1994.

II. INVESTIGATIVE METHODS OF THE COMMISSION

5. The Commission will adopt a selective approach in its work, taking account of time available as well as availability of staff and financial resources.

6. The Commission shall endeavour to proceed with exhaustive investigation and shall try to verify each allegation of grave violation of international humanitarian law committed in the territory of Rwanda.

7. In its choice and in the course of its inquiries and investigations, the Commission shall endeavour always to be impartial and fair.

8. The Commission will employ three methods of inquiry:

(a) Collection and analysis of information sent to the Commission or requested by it;

(b) The undertaking of investigative missions on the territory of Rwanda or in other countries in order to obtain supplementary information, to gather testimony and, to the extent possible, to verify the facts;

(c) The collection of information gathered by Governments for the Commission.

III. COLLECTION AND ANALYSIS OF INFORMATION

9. The Commission shall endeavour to give full effect to Security Council resolution 935 (1994) in which the Council invites States and international humanitarian organizations to make available all reliable information, documentation, videotapes, etc., containing allegations of serious violations of international humanitarian law and in particular of the Convention for the

Prevention and Punishment of the Crime of Genocide, committed in the territory of Rwanda during the armed conflict.

10. The Commission shall create a database intended to be a complete and standardized record on alleged grave violations of international humanitarian law committed on the territory of Rwanda including possible acts of genocide.

IV. INVESTIGATIVE MISSIONS

11. Another method to be employed by the Commission will consist of making investigative missions in the territory of Rwanda and in countries in which Rwandese have taken refuge to obtain supplementary information and to verify the facts.

12. The Commission will undertake two investigative missions to obtain supplementary information in accordance with the Commission's mandate.

V. COLLECTION OF INFORMATION GATHERED BY GOVERNMENTS FOR THE COMMISSION

13. The Commission will solicit the assistance of all Governments able to aid in the gathering of evidence, in particular in their own territory.

VI. CONFIDENTIALITY OF INFORMATION

14. Where the Commission receives confidential information by witnesses or evidence of serious violations of international humanitarian law, the Commission shall, to ensure this confidentiality, put in effect certain provisions in respect of security.

Appendix III

Rules of procedure of the Commission of Experts established pursuant to paragraph 1 of Security Council resolution 935 (1994)

Article 1. Mandate

The Commission shall examine and analyse information submitted to it by States, international humanitarian organizations or other persons or bodies pursuant to Security Council resolutions 918 (1994), 925 (1994) and 935 (1994), as well as such further information as the Commission may obtain through its investigations or efforts with a view to providing the Secretary-General with its conclusions on the evidence of grave violations of international humanitarian law committed in the territory of Rwanda, including possible acts of genocide.

Article 2. Meetings and quorum

1. The Commission shall hold its meetings in private but may open them to the public as and when it deems it necessary for the enhancement of the effectiveness of its work.

2. The Commission shall meet at such times as it may designate; meetings may otherwise be called by the Chairman, as a rule with at least one week's notice.

3. The Chairman may declare a meeting open when at least a majority of the members of the Commission are present. The presence of a majority of the members shall be required for any decision to be taken.

Article 3. Restraint in the disclosure of information

Members of the Commission shall exercise restraint in disclosing information. They shall refrain from taking a stand in public on any confidential question under discussion in the Commission. The Chairman will make information on the work of the Commission available to the extent he deems it appropriate.

Article 4. Powers of the Chairman

The Chairman shall declare the opening and closing of each meeting of the Commission and, at such meetings, shall direct the discussions, accord the right to speak, put questions to the vote, announce decisions, rule on points of order and have complete control of the proceedings.

Article 5. Secretariat

The Secretary of the Commission shall be responsible for making all arrangements connected with the work of the Commission, including arrangements for the meetings of the Commission. He or she shall distribute documents and materials to the members of the Commission as requested by the Commission, its Chairman or any member thereof, and shall be responsible for the preparation of the records of the meetings of the Commission.

Article 6. Records

1. The Commission will be provided with records of its meetings in English and French.

2. The Commission will arrange for the safekeeping and conservation of its records and files. After the conclusion of its work, the Commission will transmit its records and files to the Secretary-General of the United Nations.

Article 7. Participation of States, international humanitarian organizations or other persons or bodies

The Commission may invite States, international humanitarian organizations or other persons or bodies to participate in its discussions when the Commission deems it necessary for the enhancement of the effectiveness of its work.

Article 8. Investigations

1. The Commission may hear witnesses or experts on its own initiative or upon proposal by States, international humanitarian organizations or other persons or bodies. In such cases, the Commission shall determine the modalities for summoning witnesses and experts. States whose nationals have been summoned to appear before the Commission as witnesses or experts may be invited to be present when their nationals are heard.

2. The Commission may decide to request States to hear witnesses or experts.

3. The Commission may decide to visit Rwanda or any other State upon invitation or on its own initiative with the consent of any such State. Visits may be carried out by the Commission in its entirety, by one or more of its members or by the staff of the Commission as decided by the Commission.

Article 9. Decisions

The Commission will make every effort to take its decisions by consensus. In the absence of consensus, decisions of the Commission will be taken by a majority of the members present and voting.

Article 10. Reports

1. The Commission may designate a Rapporteur for any question of a general or specific nature.

2. The Commission shall report its conclusions to the Secretary-General in accordance with Security Council resolution 935 (1994).

3. Members of the Commission who wish to make a separate statement may have such a statement appended to the report.

Article 11. Other procedural matters

Any procedural matters arising at a meeting which are not covered by these rules shall be dealt with by the Chairman in the light of the rules of procedure applicable to Committees of the General Assembly.

Appendix IV

Documentation procedures for the Commission of Experts on Rwanda

The Commission, in order to ensure the confidentiality of its work and in order to protect its sources and the identity and information of victims and witnesses, has devised the following practical measures:

1. Incoming documents will be categorized as "open source", "limited access" or "confidential". "Open source" documents are published articles, United Nations reports and materials in the public domain. "Limited access" documents are internal United Nations memorandums, documents of the United Nations Assistance Mission for Rwanda (UNAMIR), etc. "Confidential" documents are materials received from any source not intended to be made public, such as affidavits of witnesses, correspondence from Governments, etc.

2. The Secretariat will make a determination as to how the documentation received will be categorized and will refer to the Chairman for guidance, if necessary.

3. A stamp will mark the document with the respective category selected in the special log which will contain the "confidential" material.

4. Incoming "open source" and "limited access" documents from States Members of the United Nations, intergovernmental and non-governmental organizations and other sources will be kept by the Secretariat in a log book (indicating the source of the submission type/subject and date of receipt) and made available upon request to Commission members and staff.

5. The original of all documents shall be primarily in the custody of the Secretary of the Commission. In his/her absence, the Assistant Secretary of the Commission will be responsible for the control of the documentation.

6. The original "confidential" documents will be kept in a combination-lock safe in the office of the Secretary at the Commission Secretariat at the United Nations Office at Geneva. The number of the combination lock to the safe will be kept by the Secretary, the Assistant Secretary and the Chairman of the Commission only.

7. All Commission members, Secretariat staff and assistants to the Commission are bound by this confidentiality agreement vis-à-vis the Commission and the information that it receives.

8. "Confidential" documents will not be released from the Commission secretariat premises. Commission members may consult these documents at the Commission secretariat.

9. After the mandate of the Commission terminates, the Commission secretariat will make arrangements for the transmittal of the documentation in its custody

at the Commission secretariat at the United Nations Office at Geneva to the Secretary-General.

10. All Commission secretariat offices at the United Nations Office at Geneva shall be locked after office hours, and on weekends. Windows shall be closed when the offices are locked.

11. All members of the Commission and staff shall use the shredder (to be purchased) for the disposal of all their papers and notes.

Appendix V

Plan of action

On-site investigation of allegations of grave violations of international humanitarian law, including possible acts of genocide

1. In accordance with the Security Council mandate, the Commission of Experts plans to gather evidence and report to the Secretary-General. The primary objective of this plan of action is to produce specific evidence likely to be used for prosecution and to identify individuals responsible for having perpetrated grave violations of international humanitarian law as well as possible acts of genocide.

2. In addition to the information and assistance provided, or which may be provided, to the Commission of Experts by the Special Rapporteur of the Commission of Human Rights, Mr. René Degni-Ségui, and by the human rights officers deployed to Rwanda by the United Nations High Commissioner for Human Rights, the Commission intends to conduct its own on-site investigations for the purpose of determining the responsibility of individuals for acts committed within the territory of Rwanda pursuant to Security Council resolution 935 (1994).

3. According to the report of the Secretary-General on the establishment of the Commission (S/1994/879), the Commission is to complete its work no later than 30 November 1994. In these circumstances, the Commission launched an urgent appeal for assistance to Member States to help to meet its mandate.

4. In view of the above and to comply with the request of the Secretary-General and of the Security Council, the Commission determined it necessary that services, rather than cash contributions should be provided directly to the Commission by the Governments for the following purposes:

(a) Forensic experts and a logistics for the investigation of mass grave sites;

(b) Investigatory teams for hearing of witnesses;

(c) Security personnel, in particular, at locations where exhumations are to be carried out or in other places the Commission may deem necessary.

Accordingly, on 23 August 1994, the Chairman stated that this assistance should be provided to the Commission at no cost to the United Nations. Member States should indicate as soon as possible the contributions they intend to make and inform the Secretariat no later than 1 September 1994. The above-mentioned services will be supervised by the Commission of Experts and coordinated in Rwanda by the head of the team of human rights officers deployed to the area by the United Nations High Commissioner for Human Rights.

Forensic experts and logistical support

5. Based on existing information, it appears that mass graves appear to be located in several places in the territory of Rwanda. For the purpose of determining the facts, the Commission aims to deploy two or three investigatory teams of specialized forensic experts to these areas for no more than three weeks. The purpose of this exercise will be to determine the existence of the mass graves, gather physical evidence, interview witnesses, to take pictures and make video recordings. The results, together with a report, shall be submitted to the Commission of Experts no later than 15 October 1994.

Investigatory teams for hearing witnesses

6. The Commission will require a large number of police investigators and prosecutors to be deployed to the territory of Rwanda for a period of three weeks, and no later than 15 September 1994. The investigatory teams will be provided upon their arrival in Rwanda with briefings for interviews of witnesses as well as a check-list and guidelines for conducting such hearings.

Security personnel

7. The Commission will require security personnel from the United Nations Assistance Mission for Rwanda (UNAMIR) for its investigatory teams as well as for the forensic experts.

Administrative matters

8. In order to make the best use of the time available, the Commission would welcome replies from Member States, with a minimum of delay, that specify their pledges with the understanding that all costs related to personnel, travel and subsistence, as well as all the equipment required by different teams for on-site investigations, will be made available to the Commission at no cost to the United Nations. Appropriate agreements will be signed between the Organization, Member States and/or organizations assisting the Commission in these efforts.